

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Jamil Abdul Shabazz,)	CASE NO. 1:10 CV 1598
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Robert Welch, Warden,)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

This matter is before the Court upon the Report and Recommendation of Magistrate Judge McHargh (Doc. 13) which recommends denial of the Motion to Dismiss pending before the Court. For the following reasons, the Report and Recommendation is ACCEPTED.

Petitioner, Jamil Abdul Shabazz, commenced this action with the filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Petitioner is incarcerated following his 2007 conviction for murder. Respondent filed a Motion to Dismiss the Petition, arguing that two of petitioner's four grounds for relief have not been exhausted. The Magistrate Judge issued his Report and Recommendation recommending that the motion be denied, and that petitioner

should be given an opportunity to file a Traverse on the merits.¹ No objections have been filed.

Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts provides, “The judge must determine *de novo* any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.” When no objections have been filed this Court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See* Advisory Committee Notes 1983 Addition to Federal Rule of Civil Procedure 72.

Having reviewed the Report and Recommendation, the Court finds no clear error and agrees with the determinations of the Magistrate Judge. Accordingly, the Motion to Dismiss is denied. This matter is returned to the Magistrate Judge for further proceedings on the Petition.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 5/2/11

¹ The Magistrate Judge also denied petitioner’s requests for discovery. 28 U.S.C. § 636(b)(1)(a) authorizes a district judge to designate a magistrate judge to “hear and determine any pretrial matter” with the exception of matters designated as dispositive. Thus, while a magistrate judge may only file a recommendation on the ultimate disposition of a habeas corpus petition, he has authority to rule on pretrial discovery matters.